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IN THE

Supreme Court of the United States

October Term, 1949

No. 248

JOHN HOWARD LAWSON

vs.

THE UNITED STATES OF AMERICA

No. 249

DALTON TRUMBO

vs.

THE UNITED STATES OF AMERICA

No. 766

EDWARD K. BARSKY, ET AL.

vs.

THE UNITED STATES OF AMERICA

No. 197

GEORGE MARSHALL

vs.

THE UNITED STATES OF AMERICA

No. 236

RICHARD MORFORD

vs.

THE UNITED STATES OF AMERICA

No. 49

HELEN PARKER, ET AL.

vs.

COUNTY OF LOS ANGELES, ET AL.

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICUS CURIAE AND BRIEF

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, The Methodist Federation for Social Action, prays leave of this Court to file this Brief Amicus Curiæ in the above-entitled case.

Petitioner organization deems it imperative in the interest of the preservation of liberty and democracy in the nation that this Court grant certiorari in the cases here and resolve the grave questions of constitutional law presented, particularly those touching freedom of speech, press, thought, association and assembly. Petitioner organization is deeply and vitally interested in those issues of law and the preservation of those liberties.

The Methodist Federation for Social Action is a membership organization which speaks for its episcopal, clerical and lay members (not officially for the Church). Its purpose is "to deepen within the Church the sense of social obligation and opportunity to study from the Christian point of view, social problems and their solution; and to promote social action in the spirit of Jesus." It has campaigned for suffrage and democratic civil liberties for all; for racial equality and brotherhood; for social and economic planning to assure full employment and maximum social welfare; for a progressive American foreign policy aimed at ending outmoded imperialism, building the United Nations and uniting the peoples for peace.

The Federation was organized in 1907 and gave birth to the first draft of the Social Creed of the Methodist Church which was later developed into the Social Creed of the Churches, the official statement on social principles

of the Federal Council of Churches, representing the overwhelming majority of American Protestantism. Since its origin, the Federation has helped keep alive the social conscience of the Methodist Church and Protestantism in general, and stimulated similar social action groups in other denominations. Believing that the issues involved in the present case vitally affect the realization of its program and the welfare and liberty of all Americans, the Federation respectfully requests leave to file the following brief amicus curiæ.

These cases concern more than the individual fates of outstanding figures in American cultural and professional life. They involve the very fabric of our constitutional democracy.

The essential design of that fabric is the principle of popular sovereignty, of government only by the consent of the governed. Its warp and woof is the doctrine that the will of the people themselves is primary to the aims and policies of any group of public officials. And the realization of that principle, the implementation of the primacy of popular will over governmental authority, depends upon the impotence of such authority to mold that will. "Authority here," said Mr. Justice Jackson (writing for this Court in *Board of Education* v. *Barnette,* 319 U. S. 624, 641) "is to be controlled by public opinion, not public opinion by authority."

Public opinion, popular will, is determined by what people hear, read and see, by the manner in which they interpret their own experiences and what they can learn of the experiences of others, by the interchange of ideas, by analysis, argument and agitation. Were the government empowered to affect the course of that determination—by granting official favor to one set of ideas, as against another, by obstructing the expression of one point of view and facilitating the expression of others, by harassing and suppressing those with whom it disagreed—it

could in essence fix the ultimate determination itself. Given the power to influence and direct thought and its expression, government could reverse the maxim enunciated by Justice Jackson, could control public opinion instead of being controlled by it, could endow itself with the substance of despotic power. For then would the wielders of governmenal authority be responsible in fact to themselves alone; by enslaving the popular will, they could usurp the popular sovereignty, and become, not the servants but the masters of the people.

Those who fought a bitter, bloody struggle to gain their freedom and independence sought a safeguard against making such a mockery of their sacrifice. They were wary of the temptations of governmental power. They were determined to prevent so easy a subversion of the democratic institutions they were establishing in the Constitution. Accordingly, they insisted upon the incorporation in that document of a specific prohibition against the invasion by government of the area of thought and verbal expression. They sought, by the agency of the First Amendment, to guarantee the inviolability of the mind and will of every American against governmental intervention in any form.

The First Amendment is thus the very foundation of our republican form of government. It is the "matrix, the indispensable condition" of all other liberties, of every institution of our democracy.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." (*Board of Education* v. *Barnette, supra,* at p. 642.)

But the present cases confront us with nothing less than an effort to eclipse that star. Here we have a statute

which purports by its terms to endow a group of public officials—a Committee of Congress—with the power to prescribe what shall be orthodox in matters of public and private life and opinion. Here we have the spectacle of a group of public officials acting under that statute proclaiming its peculiar definitions of heresy in economic, social and political doctrine, bestowing its favor upon the individuals and groups which meet its standards of propriety, thundering its condemnation of those with whom it disagrees, and requiring citizens either to avow the orthodoxy or to confess the heresy the Committee has defined.

To be sure the statute and its creature do not use the terms "orthodoxy" or "heresy"; their characterizations are framed in terms of "loyal" and "subversive," "American" and "Un-American." They do not refer to "social, political and economic doctrine"; the term "propaganda" serves as a substitute. But the meaning, the content is the same. What we have is a group of officials who presume to announce what is right or wrong, acceptable or unacceptable, for Americans to think and write and say. With Congressional approval, they have set themselves up as the definitive interpreters of good and bad American thought. They have assumed the prerogative of applying the seal of official approval to the tenets of certain individuals and groups, and to brand others with the stigma of "subversive." Is this not the official prescription of orthodoxy? Surely, the one fixed star in our constitutional constellation does not fade before an artful epithet.

Upon what basis can such a body, acting in such flagrant violation of the constitutional precepts announced by this Court be permitted to exist? Surely, the failure of the statute to set forth criminal penalties for the Committee-defined heresy is not decisive. This Court has said that "no official, high or petty can *prescribe* what shall be orthodox." (Emphasis added.) Congress may not pun-

ish heresy or "Un-Americanism," for the simple reason that it lacks the power to prescribe that which is to be punished. It is the prescription to which this Court referred, and the lack of power to punish is but a corollary to the lack of power to prescribe.

Moreover, the First Amendment provides broadly that Congress shall make *no law abridging* freedom of thought or expression. It does not confine its prescription to abridgments enforced by fine or imprisonment or injunction. It does not wilt in the face of other repressive devices. This Court has said many times that the Constitution was designed to keep abreast of the times; it must do so above all with regard to its safeguards against the incursions of despotism.

Is not such incursion the function of the Committee with which we are here concerned? It publishes its taboos and relies on other agencies for the imposition of sanctions. Those whom it finds objectionable are publicly vilified, slandered and harassed. Individuals who associate themselves with persons or organizations characterized by the Committee as "Un-American" become the objects of suspicion, of official and unofficial investigation, find themselves deprived of the opportunity for public and private employment, hindered in the pursuit of every normal channel for the fulfillment of their lives. It is indeed the aim of the Committee to destroy organizations with the purposes of which the Committee disagrees. It has thus attempted to destroy the organization in whose behalf the instant brief is filed, by attacking it, by smearing it, by endeavoring to make persons fearful of participating in that organization's efforts. The Committee's vulgarity is visited upon every group which dares to challenge its sinister program for the destruction of democracy and human decency.

But the effect of the Committee's acts is nowhere more vividly portrayed than in the very facts of the instant cases. Here are individuals who are among the foremost

artists and professionals, with records of a magnificent contribution to our national cultural and professional life, who have been deprived of their jobs, blacklisted, denied the opportunity to perform the arts and professions in which they have demonstrated so extraordinary a genius. Is this not "abridgment" of free thought and expression? Is this not punishment in its cruelest form—all the more unconscionable because it has been administered without any of the safeguards of due process which must, under our system of justice, attend the official deprivation of liberty or property?

But beyond this, these defendants have in fact been sentenced to fine and imprisonment. It is that sentence indeed which this Court is asked to review. And it flows directly from the exercise by the Committee of the powers prohibited to it by the Constitution. These defendants were tried and convicted because they refused to submit to coercive inquisition into their personal and organizational beliefs and political associations. Their conviction, therefore, rests squarely upon the Committee's invasion of the area of free thought and expression. It is based entirely upon the Committee's action in setting standards of orthodox political thought and association and presuming to determine whether particular individuals meet the standards thus declared.

There is no room for subtlety here. Stripped of nice technicalities, we are presented with a crude effort on the part of an agency of government to cast public opinion in the narrow mold that agency has itself prepared. We are faced with the exercise by a group of public officials of a prerogative never before assumed in our entire history—that of formulating for every American standards of thought and expression and association, and of compelling conformity to those standards under pain of penalties. We are confronted by a group of men who propose to foist upon us an ironclad censorship of every organ of expression, of every cultural and political form. We are

faced with the persecution of individuals who courageously challenge the power of any official to compel their acceptance of these standards of thought, who refused to submit to an inquisition in those spheres wherein the Constitution grants them immunity from government intrusion.

The action taken against the defendants herein carries with it a grave threat to the foundations of democracy. We cannot compromise with despotism; it must be resisted wherever it appears. If our constitutional liberties are to retain the life and vitality with which they were originally invested, these monstrous convictions must be set aside.

Respectfully submitted,

LEO J. LINDER,
Attorney for The Methodist Federation for Social Action.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of ....., A. D. 1949.

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